

ASSEMBLY BILL

No. 1889

Introduced by Assembly Member Hagman

February 19, 2014

An act to amend Sections 17935, 17941, 17948, and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, as tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, as introduced, Hagman. Minimum franchise tax: small business.

Existing law generally imposes an annual minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state, as specified. Existing law exempts a corporation from the payment of minimum tax in its first taxable year.

This bill would reduce that minimum tax, as provided, for a new corporation, new limited partnership, new limited liability partnership, and new limited liability company that is a small business, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17935 of the Revenue and Taxation Code
2 is amended to read:

3 17935. (a) For each taxable year beginning on or after January
4 1, 1997, every limited partnership doing business in this state (as
5 defined by Section 23101) and required to file a return under
6 Section 18633 shall pay annually to this state a tax for the privilege
7 of doing business in this state in an amount equal to the applicable
8 amount specified in Section 23153.

9 (b) (1) In addition to any limited partnership that is doing
10 business in this state and therefore is subject to the tax imposed
11 by subdivision (a), for each taxable year beginning on or after
12 January 1, 1997, every limited partnership that has executed,
13 acknowledged, and filed a certificate of limited partnership with
14 the Secretary of State pursuant to Section 15621 or 15902.01 of
15 the Corporations Code, and every foreign limited partnership that
16 has registered with the Secretary of State pursuant to Section 15692
17 or 15909.01 of the Corporations Code, shall pay annually the tax
18 prescribed in subdivision (a). The tax shall be paid for each taxable
19 year, or part thereof, until a certificate of cancellation is filed on
20 behalf of the limited partnership with the office of the Secretary
21 of State pursuant to Section 15623, 15696, 15902.03, or 15909.07
22 of the Corporations Code.

23 (2) If a taxpayer files a return with the Franchise Tax Board that
24 is designated its final return, that board shall notify the taxpayer
25 that the tax imposed by this chapter is due annually until a
26 certificate of cancellation is filed with the Secretary of State
27 pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the
28 Corporations Code.

29 (c) The tax imposed by this chapter shall be due and payable
30 on the date the return is required to be filed under former Section
31 18432 or 18633.

32 (d) For purposes of this section, "limited partnership" means
33 any partnership formed by two or more persons under the laws of
34 this state or any other jurisdiction and having one or more general
35 partners and one or more limited partners.

36 (e) Notwithstanding subdivision (b), any limited partnership
37 that ceased doing business prior to January 1, 1997, filed a final
38 return with the Franchise Tax Board for a taxable year ending

before January 1, 1997, and filed a certificate of dissolution with the Secretary of State pursuant to Section 15623 of the Corporations Code prior to January 1, 1997, shall not be subject to the tax imposed by this chapter for any period following the date the certificate of dissolution was filed with the Secretary of State, but only if the limited partnership files a certificate of cancellation with the Secretary of State pursuant to Section 15623 of the Corporations Code. In the case where a notice of proposed deficiency assessment of tax or a notice of tax due (whichever is applicable) is mailed after January 1, 2001, the first sentence of this subdivision shall not apply unless the certificate of cancellation is filed with the Secretary of State not later than 60 days after the date of the mailing of the notice.

(f) (1) Notwithstanding subdivisions (a) and (b), for taxable years beginning on or after January 1, 2015, every new limited partnership that is a small business shall pay to the state a minimum franchise tax of four hundred dollars (\$400) for its first taxable year.

(2) For purposes of this subdivision:

(A) "Gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(B) "New limited partnership" means a limited partnership that is organized under the laws of this state or has qualified to transact intrastate business in this state that begins business operations at or after the time of its organization. "New limited partnership" does not include any limited partnership that began business operations as a sole proprietorship, a limited liability company, a corporation, or any other form of business entity prior to its organization. This subdivision shall not apply to any limited partnership that reorganizes solely for the purpose of reducing its minimum franchise tax.

(C) "Small business" means a limited partnership that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the taxable year of five thousand dollars (\$5,000) or less.

(3) This subdivision shall apply to a limited partnership that does not file a timely return.

SEC. 2. Section 17941 of the Revenue and Taxation Code is amended to read:

17941. (a) For each taxable year beginning on or after January 1, 1997, a limited liability company doing business in this state (as defined in Section 23101) shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in subdivision (d) of Section 23153 for the taxable year.

(b) (1) In addition to any limited liability company that is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of registration or of articles of organization is filed on behalf of the limited liability company with the office of the Secretary of State.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated as its final return, the Franchise Tax Board shall notify the taxpayer that the annual tax shall continue to be due annually until a certificate of dissolution is filed with the Secretary of State pursuant to Section 17707.08 of the Corporations Code or a certificate of cancellation is filed with the Secretary of State pursuant to Section 17708.06 of the Corporations Code.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(d) For purposes of this section, “limited liability company” means an organization, other than a limited liability company that is exempt from the tax and fees imposed under this chapter pursuant to Section 23701h or Section 23701x, that is formed by one or more persons under the law of this state, any other country, or any other state, as a “limited liability company” and that is not taxable as a corporation for California tax purposes.

(e) Notwithstanding anything in this section to the contrary, if the office of the Secretary of State files a certificate of cancellation pursuant to Section 17707.02 of the Corporations Code for any limited liability company, then paragraph (1) of subdivision (f) of Section 23153 shall apply to that limited liability company as if the limited liability company were properly treated as a corporation

1 for that limited purpose only, and paragraph (2) of subdivision (f)
2 of Section 23153 shall not apply. Nothing in this subdivision
3 entitles a limited liability company to receive a reimbursement for
4 any annual taxes or fees already paid.

5 (f) (1) Notwithstanding any provision of this section to the
6 contrary, a limited liability company that is a small business solely
7 owned by a deployed member of the United States Armed Forces
8 shall not be subject to the tax imposed under this section for any
9 taxable year the owner is deployed and the limited liability
10 company operates at a loss or ceases operation.

11 (2) The Franchise Tax Board may promulgate regulations as
12 necessary or appropriate to carry out the purposes of this
13 subdivision, including a definition for “ceases operation.”

14 (3) For the purposes of this subdivision, all of the following
15 definitions apply:

16 (A) “Deployed” means being called to active duty or active
17 service during a period when a Presidential Executive order
18 specifies that the United States is engaged in combat or homeland
19 defense. “Deployed” does not include either of the following:

20 (i) Temporary duty for the sole purpose of training or processing.

21 (ii) A permanent change of station.

22 (B) “Operates at a loss” means a limited liability company’s
23 expenses exceed its receipts.

24 (C) “Small business” means a limited liability company with
25 total income from all sources derived from, or attributable, to the
26 state of two hundred fifty thousand dollars (\$250,000) or less.

27 (4) This subdivision shall become inoperative for taxable years
28 beginning on or after January 1, 2018.

29 (g) (1) *Notwithstanding any provision of this section to the*
30 *contrary, for taxable years beginning on or after January 1, 2015,*
31 *every new limited liability company that is a small business in a*
32 *taxable year shall pay to the state a minimum franchise tax of four*
33 *hundred dollars (\$400) for its first taxable year.*

34 (2) *For purposes of this subdivision:*

35 (A) *“Gross receipts, less returns and allowances reportable to*
36 *this state,” means the sum of the gross receipts from the production*
37 *of business income, as defined in subdivision (a) of Section 25120,*
38 *and the gross receipts from the production of nonbusiness income,*
39 *as defined in subdivision (d) of Section 25120.*

1 (B) “New limited liability company” means a limited liability
2 company that is organized under the laws of this state or has
3 qualified to transact intrastate business in this state that begins
4 business operations at or after the time of its organization. “New
5 limited liability company” does not include any limited liability
6 company that began business operations as a sole proprietorship,
7 a partnership, a corporation, or any other form of business entity
8 prior to its organization. This subdivision shall not apply to any
9 limited liability company that reorganizes solely for the purpose
10 of reducing its minimum franchise tax.

11 (C) “Small business” means a limited liability company that
12 reasonably estimates that it will have gross receipts, less returns
13 and allowances, reportable to this state for the taxable year of five
14 thousand dollars (\$5,000) or less.

15 (3) This subdivision shall apply to a limited liability company
16 that does not file a timely return.

17 SEC. 3. Section 17948 of the Revenue and Taxation Code is
18 amended to read:

19 17948. (a) For each taxable year beginning on or after January
20 1, 1997, every limited liability partnership doing business in this
21 state (as defined in Section 23101) and required to file a return
22 under Section 18633 shall pay annually to the Franchise Tax Board
23 a tax for the privilege of doing business in this state in an amount
24 equal to the applicable amount specified in paragraph (1) of
25 subdivision (d) of Section 23153 for the taxable year.

26 (b) In addition to any limited liability partnership that is doing
27 business in this state and therefore is subject to the tax imposed
28 by subdivision (a), for each taxable year beginning on or after
29 January 1, 1997, every registered limited liability partnership that
30 has registered with the Secretary of State pursuant to Section 16953
31 of the Corporations Code and every foreign limited liability
32 partnership that has registered with the Secretary of State pursuant
33 to Section 16959 of the Corporations Code shall pay annually the
34 tax prescribed in subdivision (a). The tax shall be paid for each
35 taxable year, or part thereof, until any of the following occurs:

36 (1) A notice of cessation is filed with the Secretary of State
37 pursuant to subdivision (b) of Section 16954 or 16960 of the
38 Corporations Code.

1 (2) A foreign limited liability partnership withdraws its
2 registration pursuant to subdivision (a) of Section 16960 of the
3 Corporations Code.

4 (3) The registered limited liability partnership or foreign limited
5 liability partnership has been dissolved and finally wound up.

6 (c) The tax assessed under this section shall be due and payable
7 on the date the return is required to be filed under Section 18633.

8 (d) If a taxpayer files a return with the Franchise Tax Board that
9 is designated as its final return, the Franchise Tax Board shall
10 notify the taxpayer that the annual tax shall continue to be due
11 annually until a certificate of cancellation is filed with the Secretary
12 of State pursuant to Section 16954 or 16960 of the Corporations
13 Code.

14 (e) (1) *Notwithstanding subdivisions (a) and (b), for taxable*
15 *years beginning on or after January 1, 2015, a new limited liability*
16 *partnership that is a small business shall pay to the state a*
17 *minimum franchise tax of four hundred dollars (\$400) for its first*
18 *taxable year.*

19 (2) *For purposes of this subdivision:*

20 (A) *“Gross receipts, less returns and allowances reportable to*
21 *this state,” means the sum of the gross receipts from the production*
22 *of business income, as defined in subdivision (a) of Section 25120,*
23 *and the gross receipts from the production of nonbusiness income,*
24 *as defined in subdivision (d) of Section 25120.*

25 (B) *“New limited liability partnership” means a limited liability*
26 *partnership that is organized under the laws of this state or has*
27 *qualified to transact intrastate business in this state that begins*
28 *business operations at or after the time of its organization. “New*
29 *limited liability partnership” does not include any limited liability*
30 *partnership that began business operations as a sole*
31 *proprietorship, a limited liability company, a corporation, or any*
32 *other form of business entity prior to its organization. This*
33 *subdivision shall not apply to any limited partnership that*
34 *reorganizes solely for the purpose of reducing its minimum*
35 *franchise tax.*

36 (C) *“Small business” means a limited partnership that*
37 *reasonably estimates that it will have gross receipts, less returns*
38 *and allowances, reportable to this state for the taxable year of five*
39 *thousand dollars (\$5,000) or less.*

1 (3) *This subdivision shall apply to a limited liability partnership*
2 *that does not file a timely return.*

3 SEC. 4. Section 23153 of the Revenue and Taxation Code is
4 amended to read:

5 23153. (a) Every corporation described in subdivision (b) shall
6 be subject to the minimum franchise tax specified in subdivision
7 (d) from the earlier of the date of incorporation, qualification, or
8 commencing to do business within this state, until the effective
9 date of dissolution or withdrawal as provided in Section 23331 or,
10 if later, the date the corporation ceases to do business within the
11 limits of this state.

12 (b) Unless expressly exempted by this part or the California
13 Constitution, subdivision (a) shall apply to each of the following:

14 (1) Every corporation that is incorporated under the laws of this
15 state.

16 (2) Every corporation that is qualified to transact intrastate
17 business in this state pursuant to Chapter 21 (commencing with
18 Section 2100) of Division 1 of Title 1 of the Corporations Code.

19 (3) Every corporation that is doing business in this state.

20 (c) The following entities are not subject to the minimum
21 franchise tax specified in this section:

22 (1) Credit unions.

23 (2) Nonprofit cooperative associations organized pursuant to
24 Chapter 1 (commencing with Section 54001) of Division 20 of the
25 Food and Agricultural Code that have been issued the certificate
26 of the board of supervisors prepared pursuant to Section 54042 of
27 the Food and Agricultural Code. The association shall be exempt
28 from the minimum franchise tax for five consecutive taxable years,
29 commencing with the first taxable year for which the certificate
30 is issued pursuant to subdivision (b) of Section 54042 of the Food
31 and Agricultural Code. This paragraph only applies to nonprofit
32 cooperative associations organized on or after January 1, 1994.

33 (d) (1) Except as provided in paragraph (2), paragraph (1) of
34 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
35 of Section 23181, and paragraph (1) of subdivision (c) of Section
36 23183, corporations subject to the minimum franchise tax shall
37 pay annually to the state a minimum franchise tax of eight hundred
38 dollars (\$800).

39 (2) The minimum franchise tax shall be twenty-five dollars
40 (\$25) for each of the following:

1 (A) A corporation formed under the laws of this state whose
2 principal business when formed was gold mining, which is inactive
3 and has not done business within the limits of the state since 1950.

4 (B) A corporation formed under the laws of this state whose
5 principal business when formed was quicksilver mining, which is
6 inactive and has not done business within the limits of the state
7 since 1971, or has been inactive for a period of 24 consecutive
8 months or more.

9 (3) For purposes of paragraph (2), a corporation shall not be
10 considered to have done business if it engages in business other
11 than mining.

12 (e) Notwithstanding subdivision (a), for taxable years beginning
13 on or after January 1, 1999, and before January 1, 2000, every
14 “qualified new corporation” shall pay annually to the state a
15 minimum franchise tax of five hundred dollars (\$500) for the
16 second taxable year. This subdivision shall apply to any corporation
17 that is a qualified new corporation and is incorporated on or after
18 January 1, 1999, and before January 1, 2000.

19 (1) The determination of the gross receipts of a corporation, for
20 purposes of this subdivision, shall be made by including the gross
21 receipts of each member of the commonly controlled group, as
22 defined in Section 25105, of which the corporation is a member.

23 (2) “Gross receipts, less returns and allowances reportable to
24 this state,” means the sum of the gross receipts from the production
25 of business income, as defined in subdivision (a) of Section 25120,
26 and the gross receipts from the production of nonbusiness income,
27 as defined in subdivision (d) of Section 25120.

28 (3) “Qualified new corporation” means a corporation that is
29 incorporated under the laws of this state or has qualified to transact
30 intrastate business in this state, that begins business operations at
31 or after the time of its incorporation and that reasonably estimates
32 that it will have gross receipts, less returns and allowances,
33 reportable to this state for the taxable year of one million dollars
34 (\$1,000,000) or less. “Qualified new corporation” does not include
35 any corporation that began business operations as a sole
36 proprietorship, a partnership, or any other form of business entity
37 prior to its incorporation. This subdivision shall not apply to any
38 corporation that reorganizes solely for the purpose of reducing its
39 minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as described in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

(5) For any taxable year beginning on or after January 1, 1999, and before January 1, 2000, if a corporation has qualified to pay five hundred dollars (\$500) for the second taxable year under this subdivision, but in its second taxable year, the corporation's gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars (\$1,000,000), an additional tax in the amount equal to three hundred dollars (\$300) for the second taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.

(f) (1) (A) Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first taxable year.

(B) *Notwithstanding subdivision (a), every corporation that is a new corporation in taxable years beginning on or after January 1, 2015, and is a small business in its first and second taxable year shall pay to the state a minimum franchise tax of four hundred dollars (\$400) for its second taxable year.*

(i) *For purposes of this paragraph:*

(I) *"Gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.*

(II) *"New corporation" means a corporation that is incorporated under the laws of this state or has qualified to transact intrastate business in this state that begins business operations at or after the time of its incorporation. "New*

1 *corporation” does not include any corporation that began business*
2 *operations as a sole proprietorship, a partnership, limited liability*
3 *company, or any other form of business entity prior to its*
4 *incorporation. This paragraph shall not apply to any corporation*
5 *that reorganizes solely for the purpose of reducing its minimum*
6 *franchise tax.*

7 *(III) “Small business” means a corporation that reasonably*
8 *estimates that it will have gross receipts, less returns and*
9 *allowances, reportable to this state for the taxable year of five*
10 *thousand dollars (\$5,000) or less.*

11 *(ii) This paragraph shall apply to a corporation that does not*
12 *file a timely return.*

13 (2) This subdivision shall not apply to limited partnerships, as
14 defined in Section 17935, limited liability companies, as defined
15 in Section 17941, limited liability partnerships, as described in
16 Section 17948, charitable organizations, as described in Section
17 23703, regulated investment companies, as defined in Section 851
18 of the Internal Revenue Code, real estate investment trusts, as
19 defined in Section 856 of the Internal Revenue Code, real estate
20 mortgage investment conduits, as defined in Section 860D of the
21 Internal Revenue Code, and qualified Subchapter S subsidiaries,
22 as defined in Section 1361(b)(3) of the Internal Revenue Code, to
23 the extent applicable.

24 (3) This subdivision shall not apply to any corporation that
25 reorganizes solely for the purpose of avoiding payment of its
26 minimum franchise tax.

27 (g) Notwithstanding subdivision (a), a domestic corporation, as
28 defined in Section 167 of the Corporations Code, that files a
29 certificate of dissolution in the office of the Secretary of State
30 pursuant to subdivision (b) of Section 1905 of the Corporations
31 Code, prior to its amendment by the act amending this subdivision,
32 and that does not thereafter do business shall not be subject to the
33 minimum franchise tax for taxable years beginning on or after the
34 date of that filing.

35 (h) The minimum franchise tax imposed by paragraph (1) of
36 subdivision (d) shall not be increased by the Legislature by more
37 than 10 percent during any calendar year.

38 (i) (1) Notwithstanding subdivision (a), a corporation that is a
39 small business solely owned by a deployed member of the United
40 States Armed Forces shall not be subject to the minimum franchise

1 tax for any taxable year the owner is deployed and the corporation
2 operates at a loss or ceases operation.

3 (2) The Franchise Tax Board may promulgate regulations as
4 necessary or appropriate to carry out the purposes of this
5 subdivision, including a definition for “ceases operation.”

6 (3) For the purposes of this subdivision, all of the following
7 definitions apply:

8 (A) “Deployed” means being called to active duty or active
9 service during a period when a Presidential Executive order
10 specifies that the United States is engaged in combat or homeland
11 defense. “Deployed” does not include either of the following:

12 (i) Temporary duty for the sole purpose of training or processing.

13 (ii) A permanent change of station.

14 (B) “Operates at a loss” means negative net income as defined
15 in Section 24341.

16 (C) “Small business” means a corporation with total income
17 from all sources derived from, or attributable, to the state of two
18 hundred fifty thousand dollars (\$250,000) or less.

19 (4) This subdivision shall become inoperative for taxable years
20 beginning on or after January 1, 2018.

21 SEC. 5. This act provides for a tax levy within the meaning of
22 Article IV of the Constitution and shall go into immediate effect.